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No. 01-1127

IN THE
SUPREME COURT OF THE UNITED STATES

BILL LOCKYER, Attorney General of California,

Petitioner,

v.

LEANDRO ANDRADE,

Respondent.

On Writ of Certiorari
to the Court of Appeals of the Ninth Circuit

# AMICUS CURIAE BRIEF ON BEHALF OF RESPONDENT LEANDRO ANDRADE

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## QUESTION PRESENTED BY AMICUS CURIAE

In determining whether a Three Strikes sentence is "grossly disproportionate" to a defendant's crime, should this Court consider the punishment provided as less severe merely because under the California statutory scheme a judge is given the discretion to impose a lesser sentence than the maximum permitted under the Three Strikes law?

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## AMICUS CURIAE BRIEF ON BEHALF OF RESPONDENT LEANDRO ANDRADE

### INTEREST OF THE AMICUS CURIAE[1]/

The Los Angeles County Public Defender's Office is primary trial counsel in the County of Los Angeles for all persons charged with crimes who are indigent and unable to afford private counsel. The Office is the largest office of trial counsel for criminal defendants in the State of California, with over 670 lawyers. Los Angeles County has the greatest number of defendants sentenced to life in prison under California's Three Strikes law, and the Los Angeles County Public Defender's Office has represented a sizeable majority of those defendants. The Los Angeles County Public Defender's Office represented defendant Gary Ewing (petitioner in Ewing v. California, No. 01-6978) in the trial court wherein he was sentenced to 25-years-to-life in prison.

The Los Angeles County Public Defender's Office has particular experience regarding judges' practice in exercising their limited power to impose sentences less than the life sentence called for by the Three Strikes law. Due to its representation of thousands of Three Strikes defendants who have been sentenced to life in prison, the Los Angeles County Public Defender's Office is well-qualified to assist this Court in the issues raised in this case. The Los Angeles County

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[1]/ No counsel for any party has authored this brief in whole or in part, and no person or entity, other than the Los Angeles County Public Defender's Office, made any monetary contribution to its preparation or submission. See Rule 37.6, Sup. Ct. Rules. The parties have consented to the filing of this brief, and letters of consent have been lodged with the Clerk of this Court. Rule 37.3(a).

Public Defender's Office is familiar with the questions involved herein, and the scope of their presentation.

Moreover, this Court's decision on the constitutionality of California's Three Strikes law will have a great impact on the Los Angeles County Public Defender's Office. It will be the Los Angeles County Public Defender's Office, along with the trial courts and prosecutors, which will have to work to implement whatever relief this Court provides to alleviate the plight of defendants serving life sentences for non-serious offenses.

## SUMMARY OF THE ARGUMENT

In June of 1996, a little over two years after the enactment of California's Three Strikes law, the California Supreme Court held that a judge has the power to impose a lesser sentence than life in prison if he or she finds it would be "in furtherance of justice" to do so. (People v. Superior Court (Romero), 13 Cal.4th 497 (1996).) The Los Angeles County Public Defender's Office's argument is that although the power to impose lesser sentences under the Three Strikes law technically exists, California cases subsequent to Romero have greatly narrowed the scope of a judge's discretion, deterring judges from reducing sentences, and rendering the power virtually useless even to attempt to mitigate sentences on non-serious and non-violent current crimes.

The extremely limited nature of judicial power here is aptly illustrated by two Los Angeles County cases. In one, the judge refused to exercise his discretion to reduce a sentence even though the defendant's current offense was attempting to break into a church to steal food. (People v. Taylor, BA153296.) In the other, the current offense was unlawful driving of a vehicle and receiving stolen property. The



California Court of Appeal in People v. Gaston, 74 Cal.App.4th 310 (1999) reversed the trial judge's attempt to sentence the defendant to less than 25-years-to-life in prison, despite the fact that the defendant's "strikes" occurred 17 years before the current offenses and that the defendant was suffering from diabetes.

Empirical evidence supports the Los Angeles County Public Defender's argument. A report promulgated by the independent State of California Legislative Analyst's Office (attached as Appendix A) concluded that bench officers in California failed to appreciably change their sentencing practices of people convicted of non-serious and non-violent current offenses after the Romero decision.

Likewise, statistics from California's Department of Corrections (attached as Appendices B1-B5) regarding prisoners sentenced to life sentences under the Three Strikes law in California also establish affirmatively that the power to impose lesser sentences had very little impact on the sentencing of people convicted of merely non-serious and non-violent offenses.

The conclusion is inescapable: contrary to the Attorney General's argument in its Petitioner's Brief on the Merits (PBM), the cited power to dismiss "strikes" has failed to function as a "safety valve" to prevent injustices. (PBM, at p. 16.) The fact that bench officers' power extends to impose lesser sentences is not something which should in any manner be construed to decrease the severity of the Three Strikes law's penalty.

## ARGUMENT

## I

## JUDGES' POWER TO IMPOSE SENTENCES LESS THAN THE MAXIMUM PROVIDED BY THREE STRIKES IS EXTREMELY LIMITED, EVEN TO MITIGATE THE SENTENCES OF DEFENDANTS CONVICTED OF NON-SERIOUS CURRENT OFFENSES

### A. California's Three Strikes Law

The Three Strikes law in California specifies that a defendant convicted of any current felony who has suffered two or more prior specified convictions must be sentenced to at least 25-years-to-life in state prison. (Cal. Pen. Code, §§ 667, subd. (e)(2); 1170.12, subd. (b)(2); all further statutory references to the Three Strikes law will be to that in Cal. Pen. Code § 667, subds. (b)-(i).)

To count as valid priors under the Three Strikes law, a defendant's prior convictions must be either "serious" or "violent" (as listed in Cal. Pen. Code, §§ 667.5, subd. (c), and 1192.7, subd. (c)), or, if they originated from crimes committed as a child, they must be listed in California Welfare and Institutions Code section 707, subdivision (b). "Serious" and "violent" felonies, as well as those in section 707, subdivision (b), are nearly uniformly aggravated offenses involving violence and sex crimes. (Virtually all § 667.5, subd. (c) and § 707, subd. (b), priors are subsumed within the list of "serious" felonies in Cal. Pen. Code, § 1192.7, subd. (c); hence, for simplicity's sake, references herein to "serious" crimes



should be understood to also include ones in § 667.5, subd. (c) and § 707, subd. (b).)

One remarkable aspect of the Three Strikes law is that the defendant's current offense need not be "serious" to count as a "strike": any and every felony can count as the current offense which triggers a life sentence.

### B. The Origin Of The Judges' Limited Power To Sentence Defendants To Less Than Life In Prison

The California Supreme Court has determined that if a defendant has two or more "strike" priors and commits a new felony, a judge has the power to sentence a defendant to less than life in prison, provided that the judge finds that it would be "in furtherance of justice" to do so. (People v. Superior Court (Romero), 13 Cal.4th 497 (1996).) Romero stated that the source of judges' power is California Penal Code section 1385.

Penal Code section 1385, subdivision (a), provides, in relevant part,

> "The judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed. The reasons for the dismissal must be set forth in an order entered upon the minutes"

The California Supreme Court in Romero held that a judge can use Penal Code section 1385 to dismiss, not only an entire case or "action," but also part of an action, such as an enhancement for a prior conviction. Romero ruled that a judge could use section 1385 to strike or dismiss a prior under the Three Strikes law, rendering the defendant punishable as if the

prior was never proved. Romero concluded that the power to dismiss under section 1385 was neither expressly nor impliedly abrogated by the Three Strikes law.

Romero cautioned, however, that "A court's discretion to strike prior felony conviction allegations in furtherance of justice is limited. Its exercise must proceed in strict compliance with section 1385(a), and is subject to review for abuse." (People v. Superior Court (Romero), supra, 13 Cal.4th 497, 530.) Romero admonished that a judge would act improperly and be subject to a reversal on appeal if he dismissed "strike" priors, "guided solely by a personal antipathy for the effect that the three strikes law would have on [a] defendant, while ignoring defendant's background, the nature of his present offenses, and other individualized considerations. (Id., at p. 531, quotation marks omitted.)

C. The Judges' Power Is Actively Restricted By The California Supreme Court

The Attorney General asserts that judges "have discretion to dismiss strikes in the interest of justice . . . ." (PBM, at p. 6.) The Attorney General fails to mention that this "discretion" is extremely circumscribed.

What the California Supreme Court acknowledged in Romero, it largely took away when it issued its opinion one and a-half years later in People v. Williams, 17 Cal.4th 148 (1998). In Williams, the defendant was convicted of the current offense of driving under the influence of alcohol with three drunk driving priors. This was one of many "wobbler" offenses under California law, punishable either as a felony or misdemeanor, and not sanctioned as a "serious" offense. Ordinarily, if treated as a misdemeanor, the maximum punishment would have been one year in jail, but, because



California allows driving under the influence to be considered aggravated if the defendant is a recidivist, the sentence as a felony could be up to 16 months, two, or three years in prison. However, the defendant was subject to the Three Strikes law because he had two prior convictions, an attempted robbery and a rape.

The trial judge determined under all of the circumstances that it would be unjust to sentence the defendant to 25-years-to-life in prison, so he dismissed one of the defendant's priors, and imposed a nine-year sentence. Due to statutory limitations on custody credits, the defendant would have had to serve 80%, or approximately seven years of the sentence, before being released from prison. (See Cal. Pen. Code, § 667, subd. (c)(5).)

The California Supreme Court in Williams reversed the trial judge, who had heard and seen witnesses and considered all the evidence first-hand, holding he abused his discretion in sentencing the defendant to less than 25-years-to-life. Regardless of the fact that the defendant would not be eligible for parole until he had spent 25 actual years in prison (In re Cervera, 24 Cal.4th 1073 (2001)), the Williams court held that such a sentence was appropriate for the defendant.

Williams articulated the following standard to determine whether an abuse of discretion has occurred,

> "[T]he court in question must consider whether, in light of the nature of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the [Three Strikes law's] spirit . . . ." (People v. Williams, supra, 17 Cal.4th 148, 161.)

The California Supreme Court substituted its judgment for that of the trial judge, and found nothing favorable or mitigating about the defendant's current offense of felony drunk driving, and nothing favorable about his priors. Williams went over the defendant's "background, character, and prospects," and acknowledged that the defendant had "a stable living arrangement with a woman, had expressed a desire to help care for their disabled child, and was still loved, and supported, by his family." (People v. Williams, supra, 17 Cal.4th 148,163.) However, given the nature of the defendant's priors, Williams determined that none of this took him outside the law's "spirit," and directed that the order dismissing a prior be vacated.

D. Appellate Cases Illustrate The Extremely Narrow Scope And Precarious Nature Of Judicial Power Under Section 1385 Even When The Current Offense is Unaggravated

The California Courts of Appeal following Williams have demonstrated that judges' power to dismiss "strikes" is not very potent. Following Williams, in cases where the defendant's current offense was a "serious" felony, and the judge had shown leniency, the outcome of the appeals was predictable: the judge was reversed because the defendant fell within the "spirit" of the Three Strikes law. (See People v. McGlothin, 67 Cal.App.4th 468 (1998) [current crimes of robbery, attempted robbery, and misdemeanor battery on an officer]; People v. Thornton, 73 Cal.App.4th 42 (1999) [current crimes of burglary and robbery involving a 77-year-old neighbor].)

After Williams, even in cases when the current offense was not serious, and the judge dismissed priors and sentenced a defendant to less than life in prison, the judge was reversed; in cases where the current offense was not serious and the



judge refused to dismiss any priors, sentencing the defendant to life in prison, the judge was affirmed. (See, e.g., People v. Zichwic, 94 Cal.App.4th 944 (2002) [current offense of burglary of an automobile]; People v. Stone, 75 Cal.App.4th 707 (1999) [current offense of manufacturing PCP]; People v. Gaston, supra, 74 Cal.App.4th 310 [current offenses of driving a vehicle without the owner's consent and receiving stolen property]; People v. Myers, 69 Cal.App.4th 305 (1999) [current offense of possession of a firearm following felony conviction]; People v. Cline, 60 Cal.App.4th 1327 (1998) [current offenses of grand theft and commercial burglary].)

## II

## TWO CASES LITIGATED IN LOS ANGELES COUNTY SHOW THE EXTREMELY LIMITED NATURE OF JUDICIAL POWER REGARDING THREE STRIKES

Good examples of the limit of judicial power can be found in two cases litigated in Los Angeles County, People v. Taylor, BA153296, and People v. Gaston, supra, 74 Cal.App.4th 310. Both cases show that despite non-aggravated facts and copious mitigating evidence, judges often refuse to exercise their Penal Code section 1385 power, and, when they do, the judges are likely to be reversed on appeal.

A. People v. Taylor

The Los Angeles County Public Defender's Office represented a defendant who exemplifies the injustices brought about by California's Three Strikes law. The defendant in People v. Taylor, BA153296, committed the current offense of commercial burglary in 1997 by trying to get into a church to steal food. This was a "wobbler" offense, punishable with up

to one year in jail as a misdemeanor, and normally no more than three years in prison if sentenced as a felony. (See Cal. Pen. Code, § 17, 461, subd. (2).) However, because two "strike" priors for robberies, one from 1984, and the other from 1985, were found true, the defendant was eligible for a life sentence under the Three Strikes law.

Associate Justice Earl Johnson Jr. from the California Court of Appeal described the defendant's case in the following manner: "In a scenario somewhat reminiscent of a late 20th-century, real life Les Miserables, a hungry, homeless man is sent away for 25 years to life for trying to break into a church so he could eat some food he thought the church would be glad for him to have." (People v. Taylor, found at 71 Cal.App.4th 693, Johnson, J., dissenting; the Court of Appeal did not address any issues regarding Cal. Pen. Code, § 1385, and the appellate case was subsequently reversed by the California Supreme Court on a claim-of-right ground. See S079437. The Court of Appeal on remand affirmed the defendant's conviction, again not reaching any § 1385 issues, and the Supreme Court this time denied review. See S079437.)

At the defendant's sentencing on November 20, 1997, the defendant's lawyer pleaded that the trial judge exercise his discretion under Penal Code section 1385, and not sentence the defendant to 25-years-to-life in prison. The defendant's lawyer argued that the defendant's prior convictions were both suffered over 10 years before the current offense and no weapons were used in the priors. The lawyer further argued that the current offense was extremely non-aggravated, and called as a witness to address the judge a priest from the church involved in the case.

Father Allan McCoy requested that the judge not sentence the defendant to 25-years-to-life in prison. Father McCoy told



the court that he knew the defendant to be a peaceful man, and that it would not be just or merciful to impose such a sentence on a good person who made mistakes.

Nonetheless, the judge refused to exercise his discretion to dismiss a "strike" under Romero and Penal Code section 1385. The judge sentenced the defendant to 25-years-to-life in prison.

B. People v. Gaston

The Los Angeles County Alternate Public Defender's Office represented the defendant in People v. Gaston at both the trial and appellate levels, and the Los Angeles County Public Defender's Office consulted with them in their representation. Gaston demonstrates what often happens when a judge decides to exercise leniency and the prosecution appeals: the case is reversed, and the trial judge is ordered to sentence the defendant to life in prison.

In Gaston, the defendant was convicted of unlawful driving of a vehicle and receiving stolen property for an incident involving the defendant's driving a stolen van in 1998. Both offenses were "wobblers," meaning that if they were punished as misdemeanors the defendant could have been sentenced to no more than one year in jail for both crimes. If punished as felonies, the defendant would normally been subject to a maximum of three years in prison for the two offenses. (See Cal. Pen. Code, §§ 17, 496, Cal. Veh. Code, § 10851; Cal. Pen. Code, § 654 would have barred the defendant being sentenced more than once for these two closely-related offenses.)

The defendant, however, had previously been convicted in 1981 of two "strike" priors, a robbery and a kidnaping. He was

thus subject to a sentence of up to 25-years-to-life in prison for the two current crimes.

The trial judge, after carefully assessing the defendant in person and considering all the facts, exercised discretion under Penal Code section 1385. The judge wrote a nine-page typed memorandum justifying his reasons for sentencing the defendant to less than life. (See People v. Gaston, supra, 74 Cal.App.4th 310, 318.) The judge stated in his written order that the defendant's "strike" priors occurred 17 years ago; that the defendant in his robbery prior was not a major participant or "ring leader" in the crime, and did not personally cause any physical harm to the victim; that in the kidnaping prior the defendant had picked up a girl outside her home and taken her down the street, with no physical harm to the person; that there were "absolutely no aggravating aspects" to the defendant's current crime of driving a stolen van; that the defendant was currently homeless, suffering from diabetes, and had been raised in a broken home. (Id., at pp. 319-320.)

The judge carefully exercised his discretion and dismissed the defendant's 1981 "strike" for robbery to achieve a just sentence. The judge sentenced the defendant to 10 years, out of which the defendant would have to serve at least eight years in prison before being released on parole. (People v. Gaston, supra, 74 Cal.App.4th 310, 314.)

The Court of Appeal reversed the judge's dismissal of the defendant's prior conviction. The Court of Appeal found that given the defendant's criminal record, "as to neither count can Gaston be 'deemed [to be] outside the [Three Strikes] scheme's spirit . . . .' (People v. Williams, supra, 17 Cal.4th at p. 161.)" (People v. Gaston, supra, 74 Cal.App.4th 310, 322.) Gaston ordered that the defendant serve 25-years-to-life in prison.



## III

## A REPORT FROM THE LEGISLATIVE ANALYST'S OFFICE AND STATISTICS FROM THE DEPARTMENT OF CORRECTIONS INDICATE THAT THE JUDGES' POWER TO EXERCISE LENIENCY HAS NOT HAD A SIGNIFICANT IMPACT ON DEFENDANTS

### A. The Legislative Analyst's Report And its Significance

The California Legislative Analyst's Office (LAO) is an impartial government entity overseen by a 16-member, bipartisan committee in the California Legislature. The LAO "has been providing fiscal and policy advice to the Legislature for more than 55 years. It is known for its fiscal and programmatic expertise and nonpartisan analyses of the state's budget." (See http://www.lao.ca.gov/laofacts.html.)

#### 1. The LAO Report:

On October 14, 1997, the LAO published a report entitled, "The 'Three Strikes and You're Out' Law: An Update." (See Appendix A, hereafter "LAO Report.") The report documented the number of defendants who had been sentenced to prison under the Three Strikes law for life, so-called "third strikers," and for doubled sentences, referred to in the Report as "second strikers." (LAO Report, at p. 1.)

One of the report's observations (which is fully substantiated by the statistics discussed in Section III(B) of this Brief), is that "Slightly more than half of third strikers were admitted to prison for a violent or serious offense." (LAO Report, at p. 2.) Put another way, the LAO Report concluded

that roughly one-half of the defendants serving life sentences under the Three Strikes law committed non-serious and non-violent current offenses to trigger their sentence.

The most relevant observation by the LAO for present purposes deals with the number of defendants serving life sentences under Three Strikes before judges were given power to dismiss "strikes" on June 6, 1996, and thereafter. The LAO noted that "about 120 third-strikers [are] admitted to prison each month." (LAO Report, at p. 5.) The LAO observed that, as of the date of the Report's publication in October 1997, "The number of third-strikers admitted to prison monthly has increased only slightly in the past two years." (LAO Report, at p. 5.)

The LAO then concluded, "The number has changed little since the Romero decision." (LAO Report, at p. 5.) The LAO provided a graphic chart showing the number of defendants being sentenced to prison before Romero was issued in June 1996, and after. (Ibid.) As the LAO noted, there was not much change in the numbers even after judges were given power to not sentence defendants to life in prison.

**2. The significance of the LAO's conclusions:**

Prior to Romero being issued, some case law existed regarding judges' power to sentence defendants to less than the maximum provided by Three Strikes. The vast majority of cases from the State Courts of Appeal had ruled that judges had no power to dismiss "strikes" and impose lesser sentences unless the prosecution consented. (See People v. Gore, found at 46 Cal.App.4th 1396, 1405, rev. gr. S048866 [collecting cases].)



Presumably, when the California Supreme Court issued Romero, more judges should have started to use their newly-given authority, resulting in fewer defendants being sentenced to life in prison on a month-by-month basis. Yet, the LAO could find no appreciable change in the number of defendants coming to prison on life sentences. The LAO's conclusion that the number of defendants being sentenced to life in prison since Romero had "changed little" (LAO Report, at p. 5), underscores the conclusion that the existence of judicial power has not greatly affected the application of the Three Strikes law.

B. Department of Correction Statistics Show That The Composition Of The Inmate Population Serving Life Has Altered Little Since Romero Was Issued

The California Department of Corrections (DOC) is the government institution in charge of administering California' vast penal system. It runs 33 state prisons, with a total inmate population of 157,035 as of the end of the second quarter of 2002. (See http://www.cdc.state.ca.us/factsht.htm.)

The DOC website provides summaries of the most current statistical information about the DOC, its budget, programs, and facilities. It also maintains extensive statistics on the composition of its inmate population, including statistics regarding defendants serving time under the Three Strikes law.

The Los Angeles County Public Defender provides this Court with the methodology used to analyze the statistics from the DOC, the statistics themselves, and an explanation of their significance.

**1. Notes on the methodology:**

Currently available on the DOC website are statistics regarding defendants serving doubled sentences and life sentences under the Three Strikes law starting from September 30, 2001. The DOC has been publishing statistics on Three Strikes from before this date, and the Public Defender is in possession of these documents.

The statistics relevant to this Court involve a breakdown by types of offenses which triggered a life sentence under the Three Strikes law. These statistics corroborate the LAO's observation that approximately one-half of the defendants serving life sentences under Three Strikes are in due to non-serious current offenses. (See LAO Report, at p. 2.) The statistics also show that the percentage of defendants serving life due to non-serious offenses--including the offenses at issue before this Court in the Andrade and Ewing cases, petty theft with a prior and grand theft--has not changed significantly before and after Romero was issued.

The DOC separates defendants' crimes into 33 categories of offenses, including murder, robbery, rape, kidnaping, as well as non-aggravated crimes like petty theft with a prior, non-vehicular grand theft, commercial/vehicular burglary, and possession of controlled substances for personal use. The DOC also provides categories titled "Missing," which denotes defendants for which it could not find the type of crime committed, and "Other offenses," which signifies crimes falling within none of the 33 enumerated categories.

(The number of defendants within the categories of "Missing" and "Other offenses" is very small. For example,



the statistics as of May 31, 1996, attached as Appendix B1, noted 45 defendants as "Missing," and 24 in "Other offenses" out of a total of 1,891 defendants serving life in prison under Three Strikes. For the statistical percentages calculated below, the defendants in the "Missing" and "Other offenses" were deleted from consideration.)

In order to provide this Court with percentages of defendants serving life in prison at different times in the past, the Los Angeles County Public Defender separated the categories provided by the DOC between types of crimes which are categorized by California law as "serious" and "non-serious" offenses. Serious crimes are listed in California Penal Code section 1192.7, subdivision (c).

Serious felonies are crimes which are aggravated and usually involve violence. California's Three Strikes law has designated these crimes as sufficiently aggravated so that if a defendant has previously been convicted of one or more of them, the defendant should be given enhanced punishment upon committing a new felony. (The Three Strikes law also counts "violent" felonies listed in Cal. Pen. Code, § 667.5, subd. (c), and Cal. Welf. & Inst. Code, § 707, subd. (b), as "strike" priors; however, as previously noted, virtually all § 667.5, subd. (c) and § 707, subd. (b), priors are subsumed within the serious felony list in Cal. Pen. Code, § 1192.7, subd. (c).)

**2. The DOC statistics on Three Strikes:**

The most important statistics available are those from the month before Romero was issued in June 1996, and dates subsequent thereto.

(i) May 31, 1996

As of May 31, 1996, DOC statistics show that there were **1,822** defendants serving life in prison under Three Strikes for identifiable offenses. (May 31, 1996, DOC Statistics, attached as Appendix B1; as noted above, 45 defendants listed as "Missing" and 24 in "Other offenses" were subtracted from this total.)

**53.4%** of the total defendants serving life were committed due to non-serious current offenses. Of the total number of defendants, in **6.3%** (114), the current offense was petty theft with a prior (Cal. Pen. Code, § 666), the same offense at issue in Andrade. In **1.3%** (24), the current offense was non-vehicular grand theft (Cal. Pen. Code, § 487), the offense at issue in Ewing. Other notable categories included commercial/vehicular burglary (Cal. Pen. Code, § 459), which constituted **9.2%** (168) of the total; and possession of controlled substances for personal use (Cal. Health & Saf. Code, § 11350), which fell in at **10.2%** (186) of the total. (May 31, 1996, DOC Statistics.)

(ii) September 30, 1997

As of September 30, 1997, over a year after Romero was issued, the total number of defendants serving life in prison under Three Strikes for identifiable offenses was **3,537**, nearly double what it had been in May of 1996. (September 31, 1997, DOC Statistics, attached as Appendix B2.) The percentage of defendants serving life for non-serious offenses dropped from May 1996, but not significantly.

As of September 30, 1997, **48.4%** of the total defendants serving life were there due to non-serious current offenses. Of



this total, in **5.6%** (197) the current offense was petty theft with a prior; in **1.0%** (36) the current offense was non-vehicular grand theft; in **7.9%** (278) the current offenses were commercial/vehicular burglaries; and in **9.7%** (344) the current offense was possession of controlled substances for personal use. (September 30, 1997, DOC Statistics.)

(iii) May 31, 1999

As of May 31, 1999, nearly three years after Romero was issued, the total number of defendants serving life in prison under Three Strikes for identifiable offenses was **5,176**. (May 31, 1999, DOC Statistics, attached as Appendix B3.) **47.3%** of the total defendants serving life were there due to non-serious current offenses. Of this total, in **5.3%** (274) the current offense was petty theft with a prior; in **1.4%** (71), the current offense was non-vehicular grand theft; **7.0%** (364) were commercial/vehicular burglaries; and in **10.1%** (525) the current offense was possession of controlled substances for personal use. (May 31, 1999, DOC Statistics.)

(iv) August 31, 2000

As of August 31, 2000, the total number of defendants serving life in prison under Three Strikes for identifiable offenses was **6,189**. (August 31, 2000, DOC Statistics, attached as Appendix B4.) **46.8%** of the total defendants serving life were there due to non-serious current offenses. Of this total, in **5.2%** (323) the current offense was petty theft with a prior; in **1.6%** (96) the current offense was non-vehicular grand theft; **6.9%** (426) were commercial/vehicular burglaries; and in **10.0%** (616) the current offense was possession of controlled substances for personal use. (August 31, 2000, DOC Statistics.)

(v) March 31, 2002

Finally, under the latest available statistics, as of March 31, 2002, the total number of defendants serving life in prison under Three Strikes for identifiable offenses was **7,028**. (March 31, 2002, DOC Statistics, attached as Appendix B5.) **43.2%** of the total defendants serving life were there due to non-serious current offenses. Of this total, in **4.9%** (344) the current offense was petty theft with a prior; in **1.5%** (108), the current offense was non-vehicular grand theft; **6.5%** (455) were commercial/vehicular burglaries; and in **9.2%** (650), the current offense was possession of controlled substances for personal use. (May 31, 2002, DOC Statistics.)

**3. Significance of the statistics:**

Although relatively small, there were two cognizable drops in the percentage of defendants serving life for non-serious crimes: from 1996 to 1997, and again from 2000 to 2002.

The first decrease, however, can be explained as judges using their limited Penal Code section 1385 power to retroactively re-sentence defendants. The second decrease likely had nothing to do with judges' power. The second decrease was undoubtedly attributable to the charging practice of a new District Attorney elected in November 2000 in Los Angeles County, and the effect of Proposition 36, a voter-approved change in the law also effectuated in November 2000.

The vast numbers of defendants who are to this day being committed to prison for non-serious offenses strongly indicates that the existence of power under Penal Code section 1385 does not detract from the extreme severity of the punishment



provided by the Three Strikes law. Penal Code section 1385 is no solution to the injustice perpetrated by California's law.

(i) The 1996-1997 decrease

There was a drop in the percentage of non-serious defendants serving life in prison under Three Strikes from May 1996 to September 1997: the numbers dropped from 53.6% to 48.4%, a 5.2% drop. Yet, the numbers for subsequent years from 1997 to 2000, do not reflect any other significant drops. The numbers from 1997 (48.4%) to 2000 (46.8%) do not show a marked decrease.

Likewise, the drop in percentages of individual non-serious crimes between 1996 to 1997, was not replicated in the years from 1997 to 2000. Between 1996 and 1997 the percentage of defendants serving life for petty theft dropped from 6.3% to 5.6%; but between 1997 and 2000, the drop was only from 5.6% to 5.2%. The percentage of defendants whose current offense was grand theft actually increased from 1997 to 2000, from 1.0% to 1.6%, and the percentage of defendants whose current offense was possession of drugs for personal use also rose, from 9.7% to 10%.

The 1996-1997 drop can best be explained as judges using their limited power to correct sentences from before 1996. The California Supreme Court specifically rendered its opinion in Romero "fully retroactive," allowing judges to re-sentence defendants if they now believed that a life sentence would not be in furtherance of justice. (See People v. Superior Court (Romero), supra, 13 Cal.4th 497, 530, fn. 13.) The 5.2% drop in the number of defendants serving life for non-serious offenses thus was probably due to the use of judges' power to correct past sentences. The percentage of defendants serving

life for non-serious crimes remained fairly steady subsequently until after 2000.

(ii) The 2000-2002 decrease

The drop in the percentage of non-serious defendants serving life from August 2000 to March 2002, was from 46.8% to 43.2%, a 3.6% drop. The percentage of defendants serving life for petty theft between 2000 to 2002 dropped from 5.2% to 4.9%; the percentage of defendants whose current offense was grand theft slightly dipped from 1.6% to 1.5%; and the percentage of defendants whose current offense was possession of drugs for personal use dropped from 10% to 9.2%.

The 2000-2002 drop was almost certainly due to two developments. First was the election in November 2000, of Steve Cooley as the Los Angeles County District Attorney. Mr. Cooley instituted a policy whereby defendants whose current offense is a non-serious crime are presumed not to be eligible for a life sentence under the Three Strikes law. (See D.A. Website at, http://da.co.la.ca.us/mr/2000/121900b.htm.) Since Los Angeles is the largest county in California, and the source of the greatest percentage of Three Strikes defendants, Mr. Cooley's policy has undoubtedly had an impact on the drop in defendants serving life sentences under the law.

The other development was the enactment of Proposition 36 by the voters of California. Proposition 36, codified in California Penal Code section 1210, et seq., requires that defendants convicted of possession of drugs for their personal use be given probation and drug treatment instead of incarceration. Even defendants who have "strike" priors on their record are eligible for Proposition 36, provided they have satisfied a five-year "washout" since their conviction of their



priors. (See Cal. Pen. Code, § 1210.1, subd. (b)(1); People v. Superior Court (Jefferson), 97 Cal.App.4th 530 (2002).) The advent of Proposition 36 siphoned-off some defendants who would have otherwise received life sentences.

(iii) The numbers of defendants serving life reflect the severity of the law

The life sentences meted out to the thousands of defendants who are currently in prison under the Three Strikes law for non-serious current cases effectively rebuts the Attorney General's argument that the power to dismiss "strikes" has performed as a "safety valve" preventing unjust sentences. (PBM, at pp. 16, 24.) The power to dismiss "strikes" is not a remedy to the problems with the law.

Despite the existence of judicial power to dismiss "strikes" and to sentence defendants to less than life in prison, as documented by the latest statistics from the DOC, a whopping 43.2% the total number of defendants serving life were there due to non-serious current offenses. (May 31, 2002, DOC Statistics.) That comes out to about 3,036 persons whose current crime was non-serious, including 344 petty thieves, and 108 defendants who committed grand theft.

These numbers speak volumes regarding judges' power to dismiss "strikes": in the types of cases which would most likely warrant a reduction from a life sentence, where the current offense is a non-serious offense, thousands of cases ended with no judicial reduction under Penal Code section 1385. Judges' power to reduce sentences has not impacted California's Three Strikes law in any significant way.

## CONCLUSION

In order to evaluate whether the Three Strikes law is constitutional, this Court will have to assess whether a life sentence is "grossly disproportionate" punishment to defendants' crimes. (See Harmelin v. Michigan, 501 U.S. 951, 1001 (1991) (Kennedy, J., concurring in part and concurring in the judgment); Solem v. Helm, 463 U.S. 277, 290 (1983).) The fact that judges in California have power to reduce sentences under Penal Code section 1385 certainly did not help the defendants in Andrade and Ewing, who both received life sentences, and the same is true of the thousands of defendants serving life in prison for non-serious crimes.

Respectfully submitted,

MICHAEL P. JUDGE
PUBLIC DEFENDER
OF LOS ANGELES COUNTY
CALIFORNIA
Albert J. Menaster, and
Alex Ricciardulli, Deputy Public
Defenders

By _____
ALEX RICCIARDULLI
Los Angeles County Deputy Public Defender
Counsel of Record

Attorneys for Amicus Curiae in Support of
Respondent Andrade

**APPENDIX A**

# The "Three Strikes and You're Out" Law: An Update

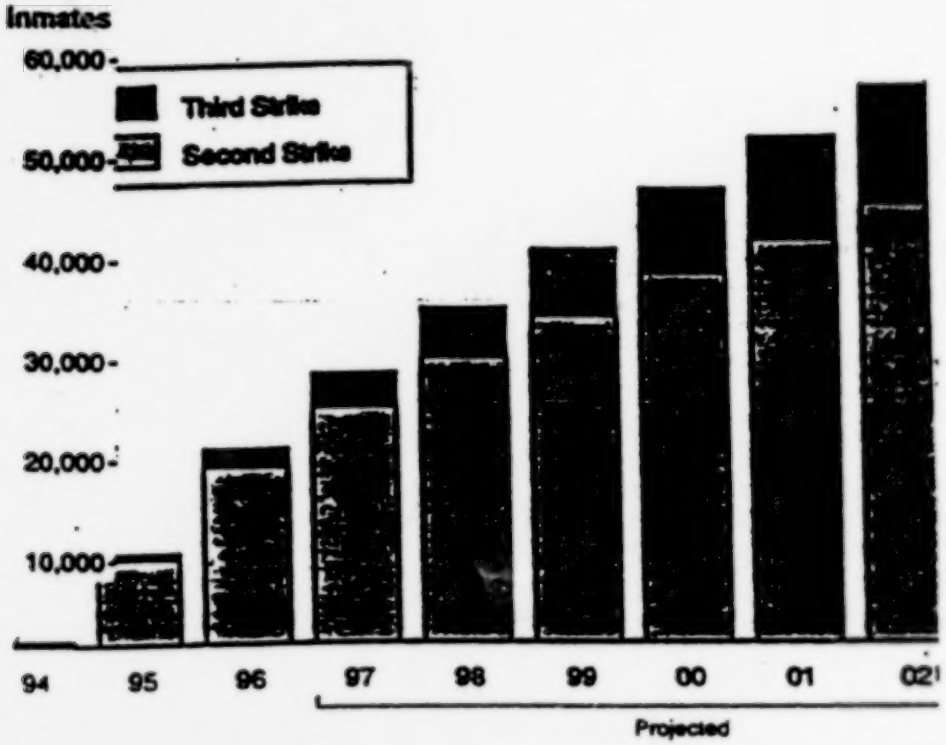
***Presented To:***

Assembly Public Safety Committee
Hon. Robert M. Hertzberg, Chair

LEGISLATIVE ANALYST'S OFFICE

*October 14, 1997*

# Second- and Third-Strike Inmate Population Increasing



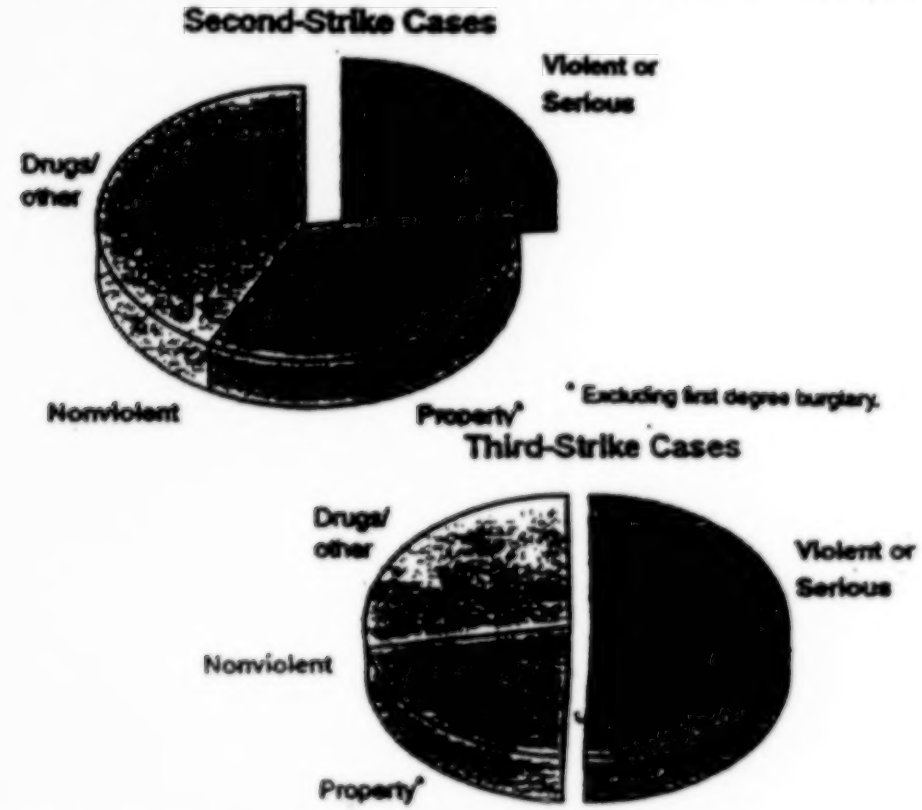

The Department of Corrections (CDC) projects that the second- and third-strike prison population will exceed 55,000 by 2002, when one of four inmates in prison will be a "second-" or "third-striker."

It should be noted that the CDC has consistently overestimated the number of second- and third-strikers, although the estimates are becoming more accurate as the state gains more experience with the "Three Strikes" population.





# Commitment Offenses Differ Substantially Among Second- and Third-Strikers




Less than one-fourth of ***second-strikers*** were admitted to prison fo a violent or serious offense.

The most common ***second-strike*** offenses are possession of controlled substance, petty theft with a prior theft, and second degre burglary.

Slightly more than half of ***third-strikers*** were admitted to prison fc violent or serious offense.

The most common ***third-strike*** offenses are robbery and first degre burglary (both are considered violent or serious offenses), followe by possession of a controlled substance, second degree burglary, an possession of a weapon.

# Counties' Commitment Patterns Vary

| Selected Counties | Total Prison Population | Three Strikes Offenders: Second-Strikers | Third-Strikers |
|---|---|---|---|
| Alameda | 3.1% | 1.2% | 1.6% |
| Kern | 3.1 | 2.8 | 4.9 |
| Los Angeles | 35.8 | 43.9 | 41.5 |
| Orange | 5.4 | 5.3 | 5.2 |
| Riverside | 4.6 | 3.9 | 3.5 |
| Sacramento | 4.1 | 4.5 | 6.1 |
| San Bernardino | 5.6 | 4.5 | 5.1 |
| San Diego | 8.4 | 11.0 | 9.8 |
| San Francisco | 2.5 | 1.0 | 0.5 |
| Santa Clara | 3.6 | 3.9 | 4.0 |

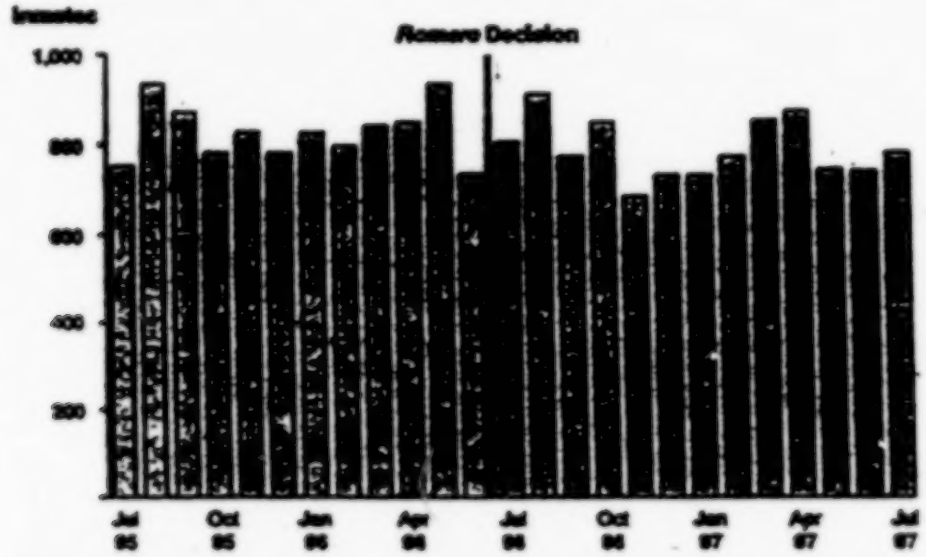
Second- and third-strikers are being sent to prison in numbers that are not necessarily reflective of each county's general prison commitment patterns, as shown above.

The differences are primarily the result of variations in charging practices of prosecutors and sentencing practices of courts.





# About 800 Second-Strikers Admitted to Prison Each Month

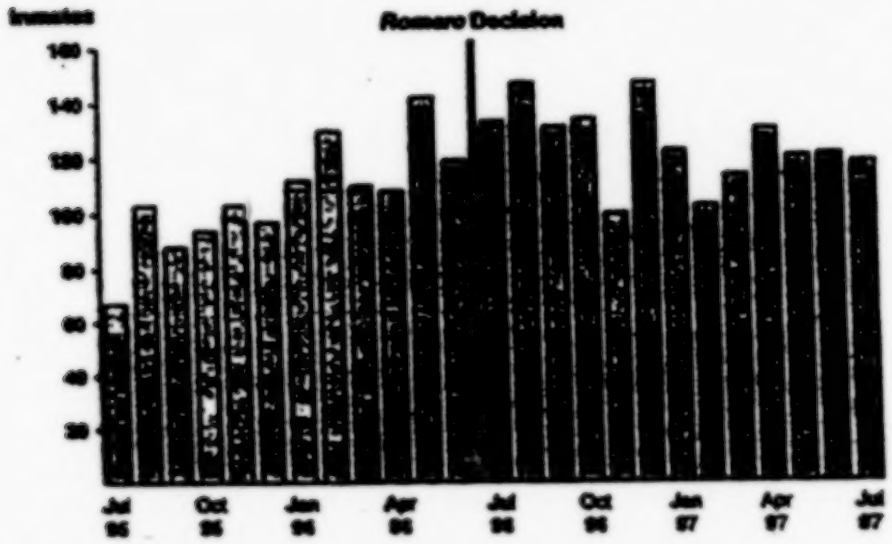



The number of second-strikers admitted to prison monthly has remained relatively constant in the past two years. The number has changed little since the *People v. Romero* court decision, which specifies that judges retain the authority to not consider prior convictions under the Three Strikes law.

Since its inception, there has been a total of 29,007 second-strikers admitted to prison.

As of the end of August 1997, there were about 24,600 second-strikers in prison or in a community correctional facility and about 4,400 second-strikers on parole.

# About 120 Third-Strikers Admitted to Prison Each Month




The number of third-strikers admitted to prison monthly has increased only slightly in the past two years. The number has changed little since the *Romero* decision.

Since its inception, there has been a total of 3,568 third-strikers admitted to state prison. As of the end of August 1997, all were still incarcerated.





# Prison System Faces Serious Housing Gap

| | Capacity of Funded Prisons | June 2006 Inmate Population | Projected Housing Gap in 2006 |
|---|---|---|---|
| Women | 13,208 | 17,580 | -4,357 |
| Men (by security classification level) | | | |
| Reception | 20,526 | 28,298 | -7,772 |
| I | 26,890 | 50,643 | -23,753 |
| II | 40,929 | 46,907 | -5,978 |
| III | 39,928 | 59,777 | -19,849 |
| IV | 28,225 | 36,035 | -9,810 |
| Special Housing | 3,080 | 3,045 | -15 |
| Totals | 170,781 | 242,285 | -71,534 |

The total state prison population will increase substantially in the coming years, in large part because of the Three Strikes law.

Based on the most recent projections, the prison system will exhaust all available space by late 2000 and there will be a shortage of more than 70,000 beds to house the projected inmate population by 2006.

DATA ANALYSIS UNIT
ESTIMATES AND STATISTICAL ANALYSIS SECTION
OFFENDER INFORMATION SERVICES BRANCH

DEPARTMENT OF CORRECTIONS
STATE OF CALIFORNIA
JULY 10, 1996

APPENDIX B1

# NUMBER OF THIRD STRIKE CASES BY OFFENSE GROUP AS OF MAY 31, 1996

| Offense Group | Frequency Court | Percent of Total Frequency | Cumulative Frequency | Cumulative Percent |
|---|---|---|---|---|
| MISSING | 45 | 2.4 | 45 | 2.4 |
| MURDER 1ST | 25 | 1.3 | 70 | 3.7 |
| MURDER 2ND | 22 | 1.2 | 92 | 4.9 |
| MANSLAUGHTER | 7 | 0.4 | 99 | 5.2 |
| VEHICULAR MANSLAUGHTER | 1 | 0.1 | 100 | 5.3 |
| ROBBERY | 300 | 15.9 | 400 | 21.2 |
| ASSAULT DEADLY WEAPON | 68 | 3.6 | 468 | 24.7 |
| OTHER ASSAULT/BATTERY | 68 | 3.6 | 536 | 28.3 |
| RAPE | 23 | 1.2 | 559 | 29.6 |
| LEWD ACT WITH CHILD | 42 | 2.2 | 601 | 31.8 |
| ORAL COPULATION | 10 | 0.5 | 611 | 32.3 |
| SODOMY | 5 | 0.3 | 616 | 32.6 |
| PENETRATION WITH OBJECT | 5 | 0.2 | 620 | 32.8 |
| OTHER SEX OFFENSES | 9 | 0.5 | 626 | 33.3 |
| KIDNAPPING | 15 | 0.8 | 644 | 34.1 |
| BURGLARY 1ST | 244 | 12.9 | 888 | 47.0 |
| BURGLARY 2ND | 168 | 8.9 | 1056 | 55.8 |
| GRAND THEFT | 25 | 1.3 | 1080 | 57.1 |
| PETTY THEFT WITH PRIOR | 114 | 6.0 | 1194 | 63.1 |
| RECEIVING STOLEN PROPERTY | 53 | 2.8 | 1247 | 65.9 |
| VEHICLE THEFT | 72 | 3.8 | 1319 | 69.8 |
| FORGERY /FRAUD | 13 | 0.7 | 1332 | 70.4 |
| OTHER PROPERTY OFFENSES | 10 | 0.5 | 1342 | 71.0 |
| CS+ POSSESSION | 186 | 9.8 | 1528 | 80.8 |
| CS+ POSSESSION FOR SALE, ETC. | 78 | 4.1 | 1606 | 84.9 |
| CS+ SALES, ETC. | 77 | 4.1 | 1683 | 89.0 |
| CS+ OTHER | 28 | 1.5 | 1711 | 90.5 |

| | | | | |
|---|---|---|---|---|
| MARIJ. POSSESSION FOR SALE | 2 | 0.1 | 1713 | 90.6 |
| MARIJUANA SALES | 16 | 0.8 | 1729 | 91.4 |
| OTHER MARIJ. OFFENSES | 2 | 0.1 | 1731 | 91.5 |
| ESCAPE | 12 | 0.6 | 1743 | 92.2 |
| DRIVING UNDER THE INFLUENCE | 13 | 0.7 | 1756 | 92.9 |
| ARSON | 2 | 0.1 | 1758 | 93.0 |
| POSSESSION OF WEAPON | 109 | 5.8 | 1891 | 98.7 |
| OTHER OFFENSES | 24 | 1.5 | 1891 | 100.0 |

APPENDIX B1

DATA ANALYSIS UNIT
ESTIMATES AND STATISTICAL ANALYSIS SECTION
OFFENDER INFORMATION SERVICES BRANCH

DEPARTMENT OF CORRECTIONS
STATE OF CALIFORNIA
OCTOBER 16, 1997

NUMBER OF THIRD STRIKE CASES
BY OFFENSE GROUP
SEPTEMBER 30, 1997

| Offense Group | Frequency Court | Percent of Total Frequency | Cumulative Frequency | Cumulative Percent |
|---|---|---|---|---|
| MURDER 1ST | 76 | 2.1 | 76 | 2.1 |
| MURDER 2ND | 50 | 1.4 | 126 | 3.5 |
| MANSLAUGHTER | 18 | 0.5 | 144 | 4.0 |
| VEHICULAR MANSLAUGHTER | 1 | 0.0 | 145 | 4.0 |
| ROBBERY | 647 | 17.8 | 792 | 21.8 |
| ASSAULT DEADLY WEAPON | 161 | 4.4 | 953 | 26.2 |
| OTHER ASSAULT/BATTERY | 145 | 4.0 | 1098 | 30.2 |
| RAPE | 66 | 1.8 | 1164 | 32.0 |
| LEWD ACT WITH CHILD | 90 | 2.5 | 1254 | 34.5 |

APPENDIX B2

| | | | | |
|---|---|---|---|---|
| ORAL COPULATION | 25 | 0.7 | 1270 | 35.2 |
| SODOMY | 12 | 0.3 | 1291 | 35.5 |
| PENETRATION WITH OBJECT | 12 | 0.3 | 1303 | 35.8 |
| OTHER SEX OFFENSES | 36 | 1.0 | 1339 | 36.8 |
| KIDNAPPING | 32 | 0.9 | 1371 | 37.7 |
| BURGLARY 1ST | 455 | 12.2 | 1816 | 49.9 |
| BURGLARY 2ND | 278 | 7.6 | 2094 | 57.6 |
| GRAND THEFT | 36 | 1.0 | 2130 | 58.6 |
| PETTY THEFT WITH PRIOR | 197 | 5.4 | 2327 | 64.0 |
| RECEIVING STOLEN PROPERTY | 87 | 2.4 | 2414 | 66.4 |
| VEHICLE THEFT | 126 | 3.5 | 2540 | 69.9 |
| FORGERY /FRAUD | 36 | 1.0 | 2576 | 70.8 |
| OTHER PROPERTY OFFENSES | 16 | 0.4 | 2592 | 71.3 |
| CS+ POSSESSION | 344 | 9.5 | 2936 | 80.7 |
| CS+ POSSESSION FOR SALE, ETC. | 141 | 3.9 | 3077 | 84.6 |
| CS+ SALES, ETC. | 121 | 3.3 | 3198 | 88.0 |
| CS+ MANUFACTURING | 10 | 0.3 | 3208 | 88.2 |
| CS+ OTHER | 52 | 1.4 | 3260 | 89.2 |



| | | | | |
|---|---|---|---|---|
| MARIJ. POSSESSION FOR SALE | 1 | 0.0 | 3261 | 89.7 |
| MARIJUANA SALES | 18 | 0.5 | 3279 | 90.2 |
| OTHER MARIJ. OFFENSES | 2 | 0.1 | 3281 | 90.2 |
| ESCAPE | 20 | 0.4 | 3301 | 90.8 |
| DRIVING UNDER THE INFLUENCE | 17 | 0.5 | 3318 | 91.3 |
| ARSON | 9 | 0.2 | 3327 | 91.5 |
| POSSESSION OF WEAPON | 210 | 5.3 | 3537 | 97.3 |
| OTHER OFFENSES | 46 | 1.3 | 3583 | 98.5 |
| UNCATEGORIZED | 53 | 1.5 | 3636 | 100.0 |

APPENDIX B2

PREVIOUSLY PUBLISHED NUMBERS MAY VARY DUE TO RECENT MODIFICATIONS TO THE DATABASE

DATA ANALYSIS UNIT
ESTIMATES AND STATISTICAL ANALYSIS SECTION
OFFENDER INFORMATION SERVICES BRANCH

DEPARTMENT OF CORRECTIONS
STATE OF CALIFORNIA
JUNE 07, 1999

APPENDIX B3

# THIRD STRIKE CASES
# BY OFFENSE GROUP
# MAY 31, 1999

| Offense Group | Frequency Court | Percent of Total Frequency | Cumulative Frequency | Cumulative Percent |
|---|---|---|---|---|
| MISSING | 64 | 1.2 | 63 | 1.2 |
| MURDER 1ST | 91 | 1.7 | 155 | 2.9 |
| MURDER 2ND | 83 | 1.6 | 238 | 4.5 |
| MANSLAUGHTER | 21 | 0.4 | 259 | 4.9 |
| VEHICULAR MANSLAUGHTER | 4 | 0.1 | 263 | 4.9 |
| ROBBERY | 979 | 18.4 | 1242 | 23.3 |
| ASSAULT DEADLY WEAPON | 241 | 4.5 | 1483 | 27.8 |
| OTHER ASSAULT/BATTERY | 277 | 5.2 | 1760 | 33.0 |
| RAPE | 81 | 1.5 | 1841 | 34.5 |
| LEWD ACT WITH CHILD | 135 | 2.5 | 1976 | 37.0 |
| ORAL COPULATION | 29 | 0.5 | 2005 | 37.6 |
| SODOMY | 14 | 0.3 | 2019 | 37.8 |
| PENETRATION WITH OBJECT | 16 | 0.3 | 2035 | 38.1 |
| OTHER SEX OFFENSES | 88 | 1.6 | 2123 | 39.8 |
| KIDNAPPING | 50 | 0.9 | 2173 | 40.7 |
| BURGLARY 1ST | 603 | 11.3 | 2776 | 52.0 |
| BURGLARY 2ND | 364 | 6.8 | 3140 | 58.9 |
| GRAND THEFT | 71 | 1.3 | 3211 | 60.2 |
| PETTY THEFT WITH PRIOR | 274 | 5.1 | 3485 | 65.3 |
| RECEIVING STOLEN PROPERTY | 121 | 2.3 | 3606 | 67.6 |
| VEHICLE THEFT | 163 | 3.1 | 3769 | 70.6 |
| FORGERY /FRAUD | 42 | 0.8 | 3811 | 71.4 |
| OTHER PROPERTY OFFENSES | 22 | 0.4 | 3833 | 71.8 |
| CS+ POSSESSION | 525 | 9.8 | 4358 | 81.7 |
| CS+ POSSESSION FOR SALE, ETC. | 218 | 4.1 | 4576 | 85.8 |
| CS+ SALES, ETC. | 163 | 3.1 | 4739 | 88.8 |
| CS+ MANUFACTURING | 18 | 0.3 | 4757 | 89.2 |
| CS+ OTHER | 73 | 1.4 | 4830 | 90.5 |

APPENDIX B3

| | | | | |
|---|---|---|---|---|
| MARIJ. POSSESSION FOR SALE | 3 | 0.1 | 4833 | 90.6 |
| MARIJUANA SALES | 25 | 0.5 | 4858 | 91.1 |
| OTHER MARIJ. OFFENSES | 2 | 0.0 | 4860 | 91.1 |
| ESCAPE | 36 | 0.7 | 4896 | 91.8 |
| DRIVING UNDER THE INFLUENCE | 27 | 0.5 | 4923 | 92.3 |
| ARSON | 17 | 0.3 | 4940 | 92.6 |
| POSSESSION OF WEAPON | 300 | 5.6 | 5240 | 98.2 |
| OTHER OFFENSES | 95 | 1.8 | 5335 | 100.0 |

APPENDIX B3

PREVIOUSLY PUBLISHED NUMBERS MAY VARY DUE TO RECENT MODIFICATIONS TO THE DATABASE

DATA ANALYSIS UNIT
ESTIMATES AND STATISTICAL ANALYSIS SECTION
OFFENDER INFORMATION SERVICES BRANCH

DEPARTMENT OF CORRECTIONS
STATE OF CALIFORNIA
SEPTEMBER 11, 2000

## THIRD STRIKE CASES BY OFFENSE GROUP AUGUST 31, 2000

| Offense Group | Frequency Court | Percent of Total Frequency | Cumulative Frequency | Cumulative Percent |
|---|---|---|---|---|
| MISSING | 65 | 1.0 | 65 | 1.0 |
| MURDER 1ST | 107 | 1.7 | 172 | 2.7 |
| MURDER 2ND | 89 | 1.4 | 261 | 4.1 |
| MANSLAUGHTER | 22 | 0.3 | 283 | 4.4 |
| VEHICULAR MANSLAUGHTER | 6 | 0.1 | 289 | 4.5 |
| ROBBERY | 1162 | 18.2 | 1451 | 22.8 |
| ASSAULT DEADLY WEAPON | 302 | 4.7 | 1753 | 27.5 |
| OTHER ASSAULT/BATTERY | 364 | 5.7 | 2111 | 33.2 |
| RAPE | 105 | 1.6 | 2222 | 34.9 |

APPENDIX B4

| | | | | |
|---|---|---|---|---|
| LEWD ACT WITH CHILD | 172 | 2.7 | 2394 | 37.6 |
| ORAL COPULATION | 40 | 0.6 | 2434 | 38.2 |
| SODOMY | 16 | 0.3 | 2450 | 38.4 |
| PENETRATION WITH OBJECT | 13 | 0.2 | 2463 | 38.6 |
| OTHER SEX OFFENSES | 119 | 1.9 | 2582 | 40.5 |
| KIDNAPPING | 63 | 1.0 | 2645 | 41.5 |
| BURGLARY 1ST | 695 | 10.9 | 3340 | 52.4 |
| BURGLARY 2ND | 426 | 6.7 | 3766 | 59.1 |
| GRAND THEFT | 96 | 1.5 | 3862 | 60.6 |
| PETTY THEFT WITH PRIOR | 323 | 5.1 | 4185 | 65.7 |
| RECEIVING STOLEN PROPERTY | 151 | 2.4 | 4336 | 68.0 |
| VEHICLE THEFT | 197 | 3.1 | 4533 | 71.1 |
| FORGERY /FRAUD | 56 | 0.9 | 4589 | 72.0 |
| OTHER PROPERTY OFFENSES | 30 | 0.5 | 4619 | 72.5 |
| CS+ POSSESSION | 616 | 9.7 | 5235 | 82.1 |
| CS+ POSSESSION FOR SALE, ETC. | 261 | 4.1 | 5496 | 86.2 |
| CS+ SALES, ETC. | 176 | 2.8 | 5672 | 89.0 |
| CS+ MANUFACTURING | 21 | 0.3 | 5693 | 89.3 |
| CS+ OTHER | 83 | 1.3 | 5776 | 90.6 |

APPENDIX B4

| | | | | |
|---|---|---|---|---|
| MARIJ. POSSESSION FOR SALE | 5 | 0.1 | 5781 | 90.7 |
| MARIJUANA SALES | 25 | 0.4 | 5806 | 91.1 |
| OTHER MARIJ. OFFENSES | 1 | 0.0 | 5807 | 91.1 |
| ESCAPE | 34 | 0.5 | 5841 | 91.6 |
| DRIVING UNDER THE INFLUENCE | 34 | 0.5 | 5875 | 92.2 |
| ARSON | 19 | 0.3 | 5894 | 92.5 |
| POSSESSION OF WEAPON | 360 | 5.6 | 6254 | 98.1 |
| OTHER OFFENSES | 118 | 1.9 | 6372 | 100.0 |
| UNCATEGORIZED | 2 | 0.0 | 6374 | 100.0 |

PREVIOUSLY PUBLISHED NUMBERS MAY VARY DUE TO RECENT MODIFICATIONS TO THE DATABASE

DATA ANALYSIS UNIT
ESTIMATES AND STATISTICAL ANALYSIS SECTION
OFFENDER INFORMATION SERVICES BRANCH

DEPARTMENT OF CORRECTIONS
STATE OF CALIFORNIA
APRIL 2000

APPENDIX B5

# SECOND AND THIRD STRIKERS IN THE INSTITUTION POPULATION BY OFFENSE CATEGORY, OFFENSE GROUP AND ADMISSION OR RETURN STATUS AS OF MARCH 31, 2002

| | ADMISSION OR RETURN STATUS | | | | |
|---|---|---|---|---|---|
| | 3rd Striker | 2nd Striker | 2nd Striker PV-RTC | 2nd Striker PendRev | Total Number |
| TOTAL | 7,167 | 31,651 | 2,086 | 1,057 | 41,961 |
| Crimes Against Persons | | | | | |
| OFFENSE GROUP | | | | | |
| MURDER 1ST | 167 | 0 | 0 | 0 | 167 |
| MURDER 2ND | 127 | 237 | 0 | 0 | 364 |
| MANSLAUGHTER | 34 | 217 | 4 | 2 | 257 |
| VEHICULAR MANSLAUGHTER | 8 | 55 | 1 | 0 | 64 |
| ROBBERY | 1,408 | 4,225 | 115 | 48 | 5,796 |
| ASSAULT DEADLY WEAPON | 356 | 1,979 | 83 | 26 | 2,444 |
| OTHER ASSAULT/ BATTERY | 416 | 1,841 | 108 | 45 | 2,410 |
| RAPE | 136 | 188 | 0 | 5 | 329 |
| LEWD ACT WITH CHILD | 241 | 634 | 13 | 6 | 894 |
| ORAL COPULATION | 45 | 51 | 1 | 1 | 98 |
| SODOMY | 16 | 17 | 0 | 0 | 33 |
| PENETRATION WITH OBJECT | 20 | 35 | 0 | 1 | 56 |
| OTHER SEX OFFENSES | 136 | 801 | 67 | 44 | 1,048 |
| KIDNAPPING | 83 | 141 | 1 | 1 | 226 |
| SUB-TOTAL | 3,193 | 10,421 | 393 | 179 | 14,186 |

| | | | | | |
|---|---|---|---|---|---|
| <u>Property Crimes</u> | | | | | |
| OFFENSE GROUP | | | | | |
| BURGLARY 1ST | 776 | 2,519 | 89 | 39 | 3,423 |
| BURGLARY 2ND | 455 | 1,786 | 169 | 84 | 2,494 |
| GRAND THEFT | 108 | 697 | 62 | 28 | 895 |
| PETTY THEFT WITH PRIOR | 344 | 2,099 | 219 | 131 | 2,793 |
| RECEIVING STOLEN PROPERTY | 164 | 697 | 90 | 40 | 991 |
| VEHICLE THEFT | 217 | 1,054 | 94 | 53 | 1,418 |
| FORGERY/FRAUD | 58 | 588 | 32 | 18 | 696 |
| OTHER PROPERTY OFFENSES | 36 | 117 | 14 | 3 | 170 |
| SUB-TOTAL | 2,158 | 9,557 | 769 | 396 | 12,880 |
| <u>Drug Crimes</u> | | | | | |
| OFFENSE GROUP | | | | | |
| CS+ POSSESSION | 650 | 4,836 | 521 | 305 | 6,312 |
| CS+ POSSESS FOR SALE, ETC. | 288 | 2,103 | 71 | 44 | 2,506 |
| CS+ SALES, ETC. | 191 | 1,273 | 24 | 23 | 1,511 |
| CS+ MANUFACTURING | 28 | 208 | 1 | 4 | 241 |
| CS+ OTHER | 41 | 181 | 10 | 10 | 242 |
| HASHISH POSSESSION | 0 | 4 | 0 | 1 | 5 |
| MARIJ. POSSESS FOR SALE | 4 | 214 | 13 | 7 | 238 |
| MARIJUANA SALES | 27 | 132 | 6 | 5 | 170 |
| OTHER MARIJUANA OFFENSES | 1 | 22 | 0 | 1 | 24 |
| SUB-TOTAL | 1,230 | 8,973 | 646 | 400 | 11,249 |
| <u>Other Crimes</u> | | | | | |
| OFFENSE GROUP | | | | | |
| ESCAPE | 5 | 55 | 6 | 1 | 77 |
| DRIVING UNDER THE INFLUENCE | 42 | 336 | 24 | 6 | 408 |
| ARSON | 25 | 107 | 5 | 2 | 139 |
| POSSESSION OF WEAPON | 365 | 1,428 | 196 | 48 | 2,037 |
| OTHER OFFENSES | 139 | 774 | 47 | 25 | 985 |
| SUB-TOTAL | 586 | 2,700 | 278 | 82 | 3,646 |

APPENDIX B5

APPENDIX B5

PREVIOUSLY PUBLISHED NUMBERS MAY DIFFER BECAUSE OF MODIFICATIONS TO THE DATABASE.